Synergy Promenade Sdn Bhd v Datuk Seri Hj Razali bin Hj Ibrahim

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-02(IM)-548–03 OF 2019
LAU BEE LAN, MOHD SOFIAN AND DARRYL GOON JJCA
1 AUGUST 2021

Civil Procedure — Striking out — Application to strike out appellant's claim — Application allowed by High Court — Appeal against — Appellant filed claim against respondent for damages in tort of defamation — Whether impugned statements were defamatory — Whether impugned statements referred to appellant — Whether there was error in finding and decision of High Court

Tort — Defamation — Libel — Appellant filed claim against respondent for damages in tort of defamation — Whether impugned statements were defamatory — Whether impugned statements referred to appellant — Whether there was error in finding and decision of High Court

This was the appellant's ('plaintiff') appeal against the decision of the High Court in allowing the respondent's ('defendant') application to strike out the appellant's writ, statement of claim and reply. The defendant was, at the material time, the Deputy Minister in the Prime Minister's Department who was responsible for the affairs relating to FELDA, an agency incorporated under the Land Development Act 1956. The plaintiff was a development company, appointed by FELDA and/or FELDA Investment Corporation Sdn Bhd ('FIC' — a private corporate entity incorporated and fully-owned by FELDA) as a master developer for a development project upon 24 lots of land owned by FELDA ('the project'). Subsequent to that, the ownership of 16 out of 24 lots of the aforesaid lands were transferred from FELDA to the plaintiff without any payment whatsoever and were registered under the plaintiff's name on various dates. Issues relating to dubious transfer of lands were highlighted in several news portals and/or newspapers and public attention was drawn to FELDA. As a result, a press conference was held by the Chairman of FELDA which was attended by the defendant. The defendant made statements at an interview which was published by several news portals. Following the publication, the plaintiff transferred all 16 lots of lands back to FELDA. The plaintiff then commenced a suit in the High Court against the defendant for defamation. The defendant filed a notice of application to strike out the plaintiff's claim and/or its claim for general damages against the defendant. The application was allowed by the High Court whereby the plaintiff's writ of summons, statement of claim and reply were struck out. Hence, this appeal.

The grounds of appeal were that the High Court had erred in law and in fact: (a) in finding that the impugned statements did not refer to the plaintiff — in spite of the defendant's several and consistent references to the 'syarikat', which could only mean the plaintiff and no one else; (b) in finding that the impugned statements were not defamatory of the plaintiff; and (c) in summarily dismissing the plaintiff's case.

Held, dismissing the appeal with costs:

(1) A plain reading of the excerpts of the impugned statements made by the defendant at the press conference were taken in isolation and out of context to justify the plaintiff's allegation that the impugned statements were defamatory in nature. If the impugned statements were taken in its entirety and construed objectively in their natural and ordinary meaning, they were incapable of bearing any defamatory meaning (see para 29).

(2) The press conference held by Tan Sri Shahrir Samad, the Chairman of FELDA, was to address the issues relating to the transfer of lands for the development project as highlighted by several portals and/or newspapers. Reading the press statements in its entirety, a reasonable man would be of the considered view that the defendant's statements amounted to a call for accountability directed at the internal management of FELDA, FIC and/or statutory bodies and were not defamatory of the plaintiff. The impugned statements in its entirety and construed objectively in their natural and ordinary meaning did not even refer to the plaintiff. The defendant was never asked to clarify or explain whom he meant by the reference to the word 'syarikat'. It could not be assumed that the word 'syarikat' referred to the plaintiff. In fact, the plaintiff named themselves in the pleading as 'Synergy Promenade Sdn Bhd' and not as 'Syarikat Synergy Promenade Sdn Bhd'. It was also too late in the circumstances of this case for the plaintiff to orally seek to amend the statement of claim (see paras 30 & 33–35).

(3) There was no appealable error in the finding and decision of the learned High Court judge. In the premises, the plaintiff's claim against the defendant 'discloses no reasonable cause of action and is plain and obviously unsustainable' (see para 40).

[Bahasa Malaysia summary

Ini adalah rayuan perayu ('plaintif') terhadap keputusan Mahkamah Tinggi yang membenarkan permohonan responden ('defendan') untuk membatalkan writ, pernyataan tuntutan dan jawapan perayu. Defendan adalah, pada masa itu, Timbalan Menteri di Jabatan Perdana Menteri yang bertanggungjawab ke atas hal ehwal berkaitan FELDA, sebuah agensi yang diperbadankan di bawah Akta Kemajuan Tanah 1956. Plaintif ialah syarikat pembangunan, dilantik oleh FELDA dan/atau FELDA Investment Corporation Sdn Bhd ('FIC' —

A entiti korporat swasta yang diperbadankan dan dimiliki sepenuhnya oleh FELDA) sebagai pemaju induk untuk projek pembangunan di atas 24 lot tanah yang dimiliki oleh FELDA ('projek'). Susulan daripada itu, hak milik 16 daripada 24 lot tanah tersebut telah dipindahkan daripada FELDA kepada plaintif tanpa sebarang bayaran dan telah didaftarkan di bawah nama plaintif B pada pelbagai tarikh. Isu berkaitan pemindahan tanah yang meragukan telah diketengahkan dalam beberapa portal berita dan/atau akhbar dan perhatian orang ramai telah tertarik kepada FELDA. Hasilnya, satu sidang media telah diadakan oleh Pengerusi FELDA yang dihadiri oleh defendan. Defendan membuat kenyataan pada temu bual yang disiarkan oleh beberapa portal C berita. Berikutan penerbitan itu, plaintif memindahkan kesemua 16 lot tanah itu kembali kepada FELDA. Plaintif kemudiannya memulakan saman di Mahkamah Tinggi terhadap defendan untuk fitnah. Defendan memfailkan notis permohonan untuk menolak tuntutan plaintif dan/atau tuntutannya untuk ganti rugi am terhadap defendan. Permohonan itu dibenarkan oleh D Mahkamah Tinggi di mana writ saman plaintif, pernyataan tuntutan dan jawapan telah dibatalkan. Oleh itu, rayuan ini. Alasan rayuan adalah bahawa Mahkamah Tinggi telah terkhilaf dari segi undang-undang dan fakta: (a) dalam mendapati bahawa kenyataan yang dipersoalkan tidak merujuk kepada plaintif — walaupun terdapat beberapa rujukan yang konsisten oleh E defendan kepada 'syarikat', yang hanya boleh bermaksud plaintif dan bukan orang lain; (b) dalam mendapati bahawa kenyataan yang dipersoalkan itu tidak memfitnah plaintif; dan (c) secara terus menolak kes plaintif.

Diputuskan, menolak rayuan dengan kos:

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(1) Pembacaan jelas petikan kenyataan yang dipersoalkan yang dibuat oleh defendan pada sidang akhbar telah diambil secara berasingan dan di luar konteks untuk mewajarkan dakwaan plaintif bahawa kenyataan yang dipersoalkan itu adalah bersifat fitnah. Jika kenyataan yang dipersoalkan G itu diambil secara keseluruhannya dan ditafsirkan secara objektif dalam makna semula jadi dan biasa, ia tidak mampu membawa sebarang makna fitnah (lihat perenggan 29).

(2) Sidang media yang diadakan oleh Tan Sri Shahrir Samad, Pengerusi FELDA, adalah untuk menangani isu-isu berkaitan pemindahan tanah H untuk projek pembangunan seperti yang diketengahkan oleh beberapa portal dan/atau akhbar. Membaca kenyataan akhbar secara keseluruhannya, seorang yang munasabah akan berpandangan bahawa kenyataan defendan adalah panggilan untuk akauntabiliti yang ditujukan kepada pengurusan dalaman FELDA, FIC dan/atau badan I berkanun dan tidak memfitnah plaintif. Kenyataan yang dipersoalkan secara keseluruhannya dan ditafsirkan secara objektif dalam makna semula jadi dan biasa tidak merujuk kepada plaintif. Defendan tidak pernah diminta untuk menerangkan atau menjelaskan siapa yang dia maksudkan dengan merujuk kepada perkataan 'syarikat'. Tidak boleh

diandaikan bahawa perkataan 'syarikat' merujuk kepada plaintif. Malah, plaintif menamakan diri mereka dalam pliding sebagai 'Synergy Promenade Sdn Bhd' dan bukannya sebagai 'Syarikat Synergy Promenade Sdn Bhd'. Keadaan kes ini juga sudah terlambat untuk plaintif memohon secara lisan untuk meminda pernyataan tuntutan (lihat perenggan 30 & 33–35).

(3) Tiada kekhilafan yang boleh dirayu dalam dapatan dan keputusan hakim Mahkamah Tinggi yang bijaksana. Oleh itu, tuntutan plaintif terhadap defendan 'tidak meunjukkan kausa tindakan yang munasabah dan nyata dan jelas tidak dapat dipertahankan' (lihat perenggan 40).]

Cases referred to

Ayob bin Saud v TS Sambanthamurthi [1989] 1 MLJ 315, HC (refd)
Bandar Builder Sdn Bhd & Ors v United Malayan Banking Corporation Bhd [1993] 3 MLJ 36, SC (refd)
Chok Foo Choo v The China Press Bhd [1999] 1 MLJ 371; [1999] 1 CLJ 461, CA (refd)
Knupffer v London Express Newspaper Ltd [1944] AC 116, HL (refd)
Newstead v London Express Newspaper Ltd [1940] 1 KB 377, CA (refd)
Soh Chun Seng v CTOS-EMR Sdn Bhd [2003] 4 MLJ 180; [2004] 5 CLJ 46, HC (folld)
Tan Sri Musa bin Dato' Hj Hassan & Ors v Uthayakumar a/l Ponnusamy [2012] 1 MLJ 68, CA (refd)

Legislation referred to

Land Development Act 1956
Rules of Court 2012 O 18 rr 12(1A), 19(1), 19(1)(a), (1)(b), (1)(d), O 78 r 3(2)

Appeal from: Civil Application No WA-23CY-38–07 of 2018 (High Court, Kuala Lumpur)

Ken St James (Jonathan Gerard with him) (Ken St James) for the appellant.
Brian Ernest Cumming (Teo Qing Qing with him) (Gideon Tan Razali Zaini) for the respondent.

Mohd Sofian JCA:

INTRODUCTION

[1] This is the appellant's appeal against the decision of the High Court dated 4 October 2018 in allowing the respondent's application (encl 8) to strike out the appellant's writ, statement of claim and reply with costs of RM3,000 subject to allocator.

[2] Enclosure 8 was filed pursuant to O 18 r 19(1)(a), (1)(b) and/or (1)(d) of the Rules of Court 2012 and the respondent prayed for the following orders namely:

> 1.1 That Writ Summons dated 20.7.2018 and Statement of Claim dated 16.7.2018 as well as Reply to the Defence dated 20.9.2018 filed by the Plaintiff against the defendant be struck out; and/or
>
> 1.2 Further and/or in the alternative, paragraph 2(c) of the Writ Summons dated 20.7.2018 and paragraph 17(c) of the Statement of Claim dated 16.7.2018, all filed by the Plaintiff against the defendant be struck out

[3] For ease of reference, the parties will be referred to as they were in the proceedings before the High Court namely, the appellant as plaintiff and the respondent as defendant, respectively.

[4] Having considered the appeal records and the submissions of counsel, both written and oral, it is our unanimous decision that the appeal be dismissed with costs. We now give our reasons for the same.

BACKGROUND FACTS

[5] The defendant was, at the material time, a Deputy Minister in the Prime Minister's Department who was responsible for affairs relating to FELDA, an agency incorporated under the Land Development Act 1956.

[6] The plaintiff is a development company, appointed by FELDA and/or FELDA Investment Corporation Sdn Bhd ('FIC' — a private corporate entity incorporated and fully owned by FELDA) as a master developer for a development project known as the Kuala Lumpur Verticle City Development Project upon 24 lots of land owned by FELDA ('project') pursuant to a letter of appointment dated 2 June 2014 and a power of attorney dated 3 June 2014.

[7] Subsequent to that, the ownership of 16 out of 24 lots of the aforesaid lands were transferred from FELDA to the plaintiff without any payment whatsoever and were registered under the plaintiff's name on various dates.

[8] On or about 21 December 2017, issues relating to dubious transfer of lands were highlighted in several news portals and/or newspapers and public attention was drawn to FELDA. As a result, a press conference was held by the Chairman of FELDA on 21 December 2017 which was attended by the defendant. The defendant made statements at an interview which was published by several news portals. Following the publication, the plaintiff transferred all 16 lots of lands back to FELDA.

[9] On or about 20 July 2018, the plaintiff commenced a suit in the High Court against the defendant for defamation alleging that the defendant had falsely and/or maliciously made defamatory statements at the press conference that were published by ASTRO Awani on 23 December 2017 resulting In the plaintiff's credibility and reputation being tarnished, brought into scandal and/or political scandal, hatred and contempt as pleaded in the plaintiff's statement of claim. Among the impugned statements referred to by the plaintiff were those set out in para 8 of the statement of claim as follows:

> 8. Plaintif menyatakan bahawa Defender) telah dalam satu siding media yang telah diterbitkan oleh ASTRO AWANI pada 23.12.2017 dan dimuat naik pada *https:// www. Youtube. Com /watch?v=Uov18BUMBE* menyatakan bahawa:-
>
> (a) 'Sebab itu yang paling penting yang cuba disampaikan tadi at all cost we want our land back sebab FELDA tak dapat pun pembayaran pada perpindahan itu'
>
> (b) 'Yang paling penting kita tak nak kita hilang tanah itu dlsebabkan perkara yang berlaku tadi.'
>
> (c) 'Bila kita gagal melakukan tadbir urus yang baik ini yang berlaku. Sebab FELDA FIG *dan juga pihak syarikat*.' (Emphasis added.)
>
> (d) 'Yang kedua kita terigok pula macam *mana kita nak recover tanah kita dalam proses perundangan Negara yang ada. Salah satu yang telah dibuat adalah laporan polis. Supaya ada frod tadi …'*
>
> (e) 'Ini semua orang tahu. Selalu semua orang tahu mesti melibatkan duit tak rasuah perkara yang paling mustahak … penyalah gunaan kuasa. Tetapi saya tak nak komen pasal SPRM. Makna the possibility akan wujud jika ada orang menyalah gunakan kuasa. Duit itu hanyalah habuan. Beri perkhidmatan seks pun takda duit tapi boleh terjerumus kepada rasuah. Tetapi, itu biar SPRM siasat la'.

[10] The plaintiff also pleaded as follows in paras 9, 9(i) to 9(iv) of the statement of claim:

> 9. Plaintif seterusnya menyatakan bahawa Defendan juga telah membuat kenyataan-kenyataan berikut kepada pihak media masa, di mana butir-butir kenyataan-kenyataan yang diadu adalah seperti berikut:-
>
> (i) *(i) TAJUK: FELDA TIDAK MAHUKAN WANG TETAPI.... Penerbit SINAR HARIAN ONLINE (OLEH NOOR AZURA SAHRIL) Tarikh: 21.12.2017*
>
> (ii) Dalam pada itu, Timbalan Menteri di Jabatan Perdana Menteri, Datuk Razali Ibrahim berkata akan ada juga tindakan sivil diambil mengenai isu tersebut 'Semua perkara ini akan disiasat sedalam murtgkin pertama sekiranya perlanggaran pematuhan pada kuasa yang diberi kepada pemegang jawatan.'
>
> (iii) *(ii) TAJUK: TAK TOLAK KEMUNGKINAN WUJUD UNSUR*

RASUAH. Penerbit: BERITA HARIAN

(iv) *Tarikh: 22.12.2017*

(v) Timbaian Mentari di Jabatan Perdana Menteri (JPM) Datuk Razali Ibrahim, tidak menolak kemungkinan wujud unsur rasuah dalam proses penukaran hak milik tanah strategic FELDA di Jalan Semarak.

(vi) 'Salah guna kuasa juga diklasifikasi sebagai rasuah. Rasuah semua orang tahu, selalu orang fikir rasuah membabitkan duit tidak. Duit hanyalah habuan.'

(vii) 'Khidmat seks pun tak ada duit, tetapi menjurus kepada rasuah. Perkara paling mustahak dalam rasuah adalah salah guna kuasa, tapi saya tidak mahu pasal SPRM'.

(viii) 'Kemungkinan akan wujud (rasuah) jika ada orang menyalah gunakan kuasa,' katanya pada sidang media di Menara FELDA di sini semalam.' Razali berkata

(ix) tindakan sivil akan diambil untuk mengenal pasti perlanggaran pematuhan peraturan dalaman agensi terbabit.

(x) 'Tindakan terhadap syarikat adalah soal kedua dan kedua-dua kita akan teiiti saya tidak mahu mana-mana pihak membuat spekulasi.

(xi) Namun saya tidak menolak kemungkinan sivil akan diambil terhadap syarikat' katanya.

(xii) (iii) TAJUK: PINDAH MILIK TANAH MUNGKIN ADA UNSUR RASUAH

(xiii) *Penerbit: BERITA HARIAN (OLEH NAZURA NGAH) Tarikh: 21.12.2017*

(xiv) Timbalan Menteri di Jabatan Perdana Menteri (JPM) Datuk Razali Ibrahim, berkata pihaknya akan menyerahkan kepada Suruhanjaya Pencegahan Rasuah Malaysia (SPRM) untuk menyiasat kes berkenaan kerana penyalahgunaan kuasa juga dikiasifikasi sebagai rasuah.

(xv) 'Rasuah semua orang tahu, selaiu orang fikir rasuah mesti membabitkan duit, tidak. Duit hanyalah habuan, beri perkhidmatan seks pun tak ada duit tetapi menjurus kepada rasuah.

(xvi) 'Perkara paling mustahak dalam rasuah adalah penyalahgunaan kuasa tetapi saya tidak mahu komen pasal SPRM, kemungkinan akan wujud (rasuah) jika ada orang menyalahgunakan kuasa,' katanya pada siding media di Menara FELDA, disini, hari ini.

(xvii) Mengulas lanjut, Razali menegaskan kerajaan tidak akan membiarkan kepentingan FELDA terjejas berikutan isu penukaran hak milik tanah agensi berkenaan.

(xviii) Razaii berkata, tindakan sivil akan diambil untuk mengenal pasti pelanggaran pematuhan peraturan dalaman agensi berkenaan.

(xix) Kata, jika wujud pelanggaran, pihak berkaitan tidak boleh dibiarkan terlepas daripada tindakan.

(xx) 'Tindakan terhadap syarikat adalah soal kedua dan kedua-dua itu kita akan teliti, saya tidak mahu mana-mana pihak membuat spekuJasi, tetapi saya tidak menolak kemungkinan tindakan sivil diambil (terhadap syarikat)' katanya.

(xxi) *(iv) TAJUK: TANAH FELDA: RUNDINGAN UNTUK SELESAIISU. Penerbit: Berita Harian (OLEH BADRUL KAMAL ZAKARIA) Tarikh: 23.12.2017*

(xxii) 'Pada saya pintu rundingan perlu dibuka supaya tidak perlu sampai ke Mahkamah yang prosesnya panjang. Tetapi kes polis, itu memang tidak boleh runding.

(xxiii) 'Satu peringkat akan selesai tetapi (kaedah) penyelesaian bergantung (mengikut keadaan). Sebab saya pun fikir macam ini, apa pun yang beriaku, syarikat terbabit akan juga terpaksa jumpa FELDA.

(xxiv) 'Itu yang Tan Sri Shahrir Samad (Pengerusi FELDA) sebut. Sampai kena pindah hak milik tanah. Sudahlah beriaku macam itu, banyak pula persoalannya. Kalau kita nak bangunkan tempatitu, ada acara yang lebih baik. Menguntungkan pihak yang terbabit tetapi apa yang beriaku tidak sedemikian. Yang ini kita nak perbetulkan dan saya yakin ia dapat diselesaikan dengan cepat' katanya.

(xxv) 'Sebab itu perkataan seperti ketidakpatuhan kalau wujud, 'fraud'jika wujud dan 'rasuah'jika wujud. la bukan hanya diperingkat FELDA saja tetapi agensi lain.

[11] The reliefs sought by the plaintiff stated in para 17 of the statement of claim were as follows:

17. Oleh yang demikian, Plaintif menuntut:

(a) Suatu injunksi yang menghalang Defendan, sama ada dengan dirinya sendiri, pekerja-pekerjanya atau ejen-ejennya atau sebaliknya, daripada bercakap, menerbitkan atau menyebabkan diterbitkan pernyataan dan/atau perkataan yang dinyatakan dalam keseluruhan perenggan 8 dan 9 di atas atau apa-apa pernyataan dan /atau perkataan yang sama sekali menggugat Plaintifdan perdagangan atau pemiagaannya;

(b) Suatu perintah mengarahkan Defendan dalam tempoh tujuh (7) hari dari tarikh perintah tersebut, menghantar kepada Plaintif permintaan maaf berdasarkan terma-terma yang akan diluluskan oleh Plaintif dan akan disiarkan dalam lima (5) akhbar nasional pilihan Plaintif;

(c) Suatu perintah yang mengarahkan Defendan dalam tempoh tujuh (7) hari dari tarikh perintah ini, membayar ganti rugi kepada Plaintif dalam jumiah RM100 juta;

(d) Suatu perintah yang mengarahkan Defendan dalam tempoh tujuh (7) hari dari tarikh perintah ini, memberikan suatu aku janji bertulis untuk tidak mengulangi kenyataan dan/atau perkataan yang dinyatakan di atas kepada Plaintif berdasarkan terma-terma yang akan diluluskan oleh Plaintif;

(e) Gantirugi Am;

(f) Faedah;

(g) Kos;

(h) Apa-apa lagi dan/atau relief lain yang dianggap sesuai dan wajar oleh Mahkamah Yang Mulia ini.

[12] On 30 August 2018, the defendant filed his defence and pleaded that the impugned statements were not defamatory in nature and/or they made no reference to the plaintiff. The defendant also pleaded that even if the impugned statements were defamatory (which was denied), the defendant relied on the defence of justification, fair comment and/or qualified privilege.

[13] On 4 October 2018, the defendant filed a notice of application (encl 8) to strike out the plaintiff's claim and/or its claim for general damages of RM100m against the defendant. This application was allowed by the High Court on 13 March 2019 whereby the plaintiff's writ of summons, statement of claim and reply were struck out and the plaintiff was ordered to pay cost of RM3,000 to the defendant subject to allocator fees of 4%.

[14] Dissatisfied, the plaintiff appealed against the whole of the decision of High Court.

THE PLAINTIFF'S CASE

[15] The plaintiff in this appeal argued as follows:

(a) that the impugned statements made by the defendant referred to the plaintiff for the following reasons:

(i) because the plaintiff has been named in context;

(ii) the subsequent republications were part of a series of publications where the plaintiff was expressly named; and functions, business and conduct as a property developer in general and/or as the master developer of the KLVC Project on FELDA's Jalan Semarak Lands. The following meanings, pleaded in para 11 of the plaintiff's statement of claim, are more than capable of being so understood by persons acquainted with the plaintiff:

(1) that the plaintiff had caused FELDA to lose its assets and experience huge losses;

(2) that the plaintiff was involved in a crime and/or involved in business practices for its own interests that cannot be trusted;

(3) that the plaintiff uses and/or is involved in practices and procedures that are against the law, by means of cheating and/or deceiving FELDA;

(4) that the plaintiff had wrongfully transferred assets belonging to FELDA to an extent that FELDA has been jeopardised;

(5) that FELDA had become the plaintiffs victim and the plaintiff had prioritised its own interest;

(6) that there was something not right with the Agreement entered into between the plaintiff and FELDA which caused FELDA to suffer losses; and/or

(7) that the plaintiff committed a crime which required a police report to be made.

(iii) the issues arising in this case concerning the meaning of the defendant's statements are not suitable for summary

(iv) the defendant's statements, when taken in context, would have led any reasonable person acquainted with the plaintiff to believe that the statements could only be read as referring to the plaintiff.

(b) all that was required at trial was for the plaintiff to establish that the words were such that they would reasonably lead persons acquainted with the claimant to believe that it was referred to (see *Knupffer v London Express Newspaper Ltd* [1944] AC 116). The defendant's statements, seen in the context of the press conference as a whole, had sufficient particulars to lead any person reading or hearing them to believe that they were referring to the plaintiff. This is because it was the plaintiff who was the only developer of FELDA's Jalan Semarak Lands and no one else;

(c) the question of whether or not the defendant's statements were understood by reasonable persons who know the plaintiff as referring to the plaintiff is a question of fact to be determined after trial. The plaintiff should not be summarily deprived of the opportunity to produce witnesses and to lead evidence on this issue of reference to the plaintiff, at the trial;

(d) it is clear that when considering the defendant's statements as a whole in the context of the entire press conference, the defendant's statements, in their natural and/or ordinary meaning and by way of innuendo, are clearly more

than capable of being defamatory of the plaintiff in the way of its determination and there was no basis for the defendant's application to strike out the plaintiff's claim;

(e) the substantive defences pleaded by the defendant, that is, justification, fair comment and qualified privilege are matters to be left for trial which is to be considered after the court finds that the defendant's statements are in fact defamatory of the plaintiff. They are not grounds on which to strike out the plaintiffs claim; and

(e) the rules of pleading in respect of defences to claims for defamation are set out in O 78 r 3(2) of the Rules of Court 2012. The rule is a mandatory rule. It requires a defendant to plead the particulars of the facts that it relies on to support a plea of justification or a plea of fair comment.

THE DEFENDANT'S CASE

[16] On the other hand, the defendant, in support of their application to strike out the plaintiff's case submitted as follows:

(a) the law relating to striking out is trite and does not require in-depth analysis;

(b) the plaintiff's writ summons and statement of claim do not disclose a reasonable cause of action against the defendant, that the plaintiffs claim is scandalous, frivolous, vexatious and/or an abuse of the process of court and is obviously unsustainable. The plaintiffs claim ought to be struck out based on the following grounds:

(i) it is trite that to establish a cause of action in defamation, the burden lies on the plaintiff to prove the following essential elements of the impugned statements:

(1) the words are defamatory;

(2) the words refer to the plaintiff; and

(3) the words were published

(ii) the words were not defamatory. To determine whether the impugned statements are defamatory, the contents of the impugned publication must be viewed as a whole and not in isolation;

(iii) the plaintiff must show that the impugned statements are defamatory of the plaintiff and that it clearly referred to the plaintiff. Words and/statements generally directed at no particular person would not

suffice. With regard to this, there was no publication of defamatory words/statements concerning the plaintiff;

(iv) it is apparent that the press conference held by Tan Sri Shahrir Samad, the Chairman of FELDA, was to address the issues relating to the transfer of lands for the development project as highlighted by several portals and/or newspapers on or about 21 December 2017. The public were concerned with the issues that FELDA may have lost its lands and the press conference was held on the same day because of the urgency to resolve the issues;

(v) from a reading of the whole press statement, it is clear that the defendant's focus was on the discussions held between FELDA, the Attorney General's Chambers ('AGC') and the Prime Minister's Department on the meetings to address the issue relating to the internal abuse of power in FELDA and subsequently, the various options open to FELDA to recover the lands back. Reading the press statement as a whole, a reasonable man would consider that the defendant's statements to be a call for accountability directed at the internal management of FELDA and/or FIC and/or other Statutory Bodies and not to the plaintiff. In fact, the defendant expressly highlighted that he did not want anyone to speculate and that further investigations will be conducted and necessary steps taken by FELDA, either by way of civil or criminal proceedings or exploring an amicable settlement to resolve the matter; and

(vi) the defendant was merely performing his public duty as a Deputy Minister in the Prime Minister's Department, which is responsible for FELDA, to address the public's concerns at the material time. His statements and/or the impugned statements do not have any defamatory imputation against the plaintiff at all and do not expose the plaintiff to hatred, ridicule, contempt in the mind of a reasonable man of this time and era, where public perception of accountability, transparency, good governance in respect of those holding office or position, or who get involved in political or organisation affairs have become a matter of critical scrutiny by the public and by those who are associated with it;

(c) on plaintiffs claim against the defendant for damages of RM100m, The defendant submits that general damages must not be quantified in the statement of claim and it is for the court to determine the quantum of damages pursuant to the O 18 r 12(1A) of the Rules of Court 2012.

DECISION OF THE HIGH COURT

[17] On 13 March 2019, the learned High Court judge ('HCJ') had allowed the defendant's application for striking out based on the following reasons:

(a) in allowing the defendant's application for the striking or dismissal of the plaintiffs writ of summons and statement of claim, the HCJ maintained that the HCJ was guided by the relevant legal provisions, legal principles and judicial pronouncement on striking out and that the upon which the court acts in exercising its power under O 18 r 19(1) of the Rules are well settled. It is only in plain and obvious cases that recourse should be had to the summary process under this rule;

(b) it was apparent that, the plaintiffs case against the defendant was solely premised on the defendant's utterance of the impugned statements during the press conference which were claimed by the plaintiff to have defamed and caused loss and damage to the plaintiff. However, upon the evaluation of the parties' supporting affidavits, parties' written submission and guided by the legal and judicially enunciated principles, it was clear that the impugned statements did not refer to the plaintiff or were defamatory of the plaintiff;

(c) both the statements made by the FELDA Chairman and the defendant exhibited in 'MH-12' were responses to the public issue of internal abuse of power within FELDA. The defendant's statements were clearly an update of discussions held by FELDA with other government department namely, the AGC and, the Prime Minister's Department;

(d) as the Deputy Minister in the Prime Minister's Department, the defendant was clearly in the position to make the impugned statements as he was responsible for matters relating to FELDA. The defendant's replies and responses during the press conference were, when taken as a whole, found to be a reasonable and fair account of the issue of FELDA's abuse and questionable internal management and, FIC;

(e) the defendant's statements were not at all defamatory of the plaintiff and instead, were clearly objective and, mere statements of fact as the defendant had highlighted on the public need to speculate on the issue of FELDA's mismanagement. He had assured the public of possible civil or criminal proceedings in the event of any finding of mismanagement and abuse;

(f) the defendant's statements at the press conference were clearly made in the exercise of the defendant's function and public duty as Deputy Minister in charge of FELDA affairs to address the public's concern over FELDA's dubious and questionable transfers of its land for the project;

(g) the defendant's statements were, in their entirety, not defamatory of the plaintiff. They did not refer to or were directed at the plaintiff. Instead the impugned statements had clearly referred to FELDA, FIC and other agencies, the land officers and/or the Dewan Bandaraya Kuala Lumpur; and

(h) the defendant's statements were in fact made in relation to the ongoing investigations by government agencies into the dubious transfers of FELDA's lands and ascertainment of its causes and the parties responsible for the transfers. The defendant had in fact even proposed further negotiation on the matter with the plaintiff which clearly supported defendant's case that his statements were neither defamatory nor did they impute any malicious intent on the plaintiff's part.

THE APPEAL

[18] This appeal is premised on the following grounds as stated in the memorandum of appeal namely:

(a) the learned HCJ erred in law and fact in finding that the impugned statements (statements by the defendant at a press conference) did not refer to the plaintiff — in spite of the defendant's several and consistent references to the 'syarikat', which could only mean the plaintiff and no one else. The impugned statements were made in conjunction with the statements of the defendant's co-interviewee at the press conference (Tan Sri Shahrir Abdul Samad), who explicitly mentioned the plaintiffs name 'Syarikat Synergy Promenade Sdn Bhd' several times, both before and after the defendant's statements. In any event, any uncertainty (if at all) as to whether the defendant was referring to the plaintiff, ought to be determined through the process of a trial;

(b) the learned HCJ erred in law and fact in finding that the impugned statements were not defamatory of the plaintiff, ie not capable of bearing a defamatory meaning (a question of law) and not in fact defamatory (a question of fact);

(c) the learned HCJ erred in law and fact in summarily dismissing the plaintiff's case in spite of the trite principles that:

(i) an application to strike out should not descend into a contest of affidavits (four affidavits were filed by the defendant, three opposing affidavits were filed by the plaintiff, and the affidavits contained contentious facts); and

(ii) striking out is unsuitable where complex questions of law which require serious argument are raised (for instance: whether the impugned statements were defamatory, and whether the defences of justification, qualified privilege and fair comment were applicable).

SUBMISSIONS

[19] Learned counsel for the plaintiff submitted that the defendant did refer to the plaintiff in his statement This is clear from the transcript of the press conference and the media's articles. If there was ever any doubt, this issue should have been dealt with at the trial.

[20] Learned counsel further submitted that it is trite that the court should not strike out pleadings on the ground that the impugned statements are not defamatory. The issue of whether the statements are defamatory should only be dealt with at the trial.

[21] It is trite as set out in the decision of the Supreme Court in *Bandar Builder Sdn Bhd & Ors v United Malayan Banking Corporation Bhd* [1993] 3 MLJ 36 that:

(a) a litigant should not be driven away from the seat of justice, no matter how weak his/her case may seem to be;

(b) the power to dismiss an action summarily, without permitting a party to proceed to trial-is a drastic power and should be exercised with utmost caution;

(c) an application to strike out should not descend into a trial on affidavits. The court should not attempt to resolve conflicts of evidence on affidavit as to facts; and

(d) striking out is unsuitable when there are issues of law that require lengthy argument and mature consideration.

[22] On the other hand, it was argued by the learned counsel for the defendant that the impugned statements are not defamatory in nature and/or made no reference to the plaintiff. The defendant also pleaded that even if the impugned statements were defamatory (which was denied), the respondent relies on the defence of justification, fair comment and/or qualified privilege.

[23] The defendant contends that the plaintiffs writ summons and statement of claim do not disclose a reasonable cause of action against the defendant, that the plaintiffs claim is scandalous, frivolous, vexatious and/or an abuse of the process of court and is obviously unsustainable. The plaintiffs claim ought to be struck out and its appeal against the decision of the High Court should be dismissed.

[24] Before us, the learned counsel for the defendant canvassed the same argument as in High Court.

OUR DECISION: A

[25] It is trite that to establish a cause of action of defamation, the burden lies on the plaintiff to prove the following essential elements:

(a) the words are defamatory; B

(b) the words refer to the plaintiff; and

(c) the words are published.

[26] In *Ayob bin Saud v TS Sambanthamurthi* [1989] 1 MLJ 315 Mohamed Dzaiddin J (as he then was) has laid down the necessary procedure in establishing claim for libel (with which we agree) when His Lordship said at p 316 as follows: C

> In our law on libel, which is governed by the Defamation Act 1957, the burden of proof lies on the plaintiff to show (1) the words are defamatory; (2) the words refer to the plaintiff; and (3) the words were published. Where a defence of qualified privilege is set up, as in the present case, the burden lies on the defendant to prove that he made the statement honestly; and without any indirect or improper motive. Then if he succeeds in establishing qualified privilege, the burden is shifted to the plaintiff in this case to show actual or express malice which upon proof thereof, communication made under qualified privilege could no longer be regarded as privileged: *Rajagopal v Rajan* [1972] 1 MLJ 45. D E

[27] In *Chok Foo Choo v The China Press Bhd* [1999] 1 CLJ 461, Gopal Sri Ram JCA (later FCJ) speaking for the Court of Appeal postulated the following two-staged approach in evaluating the words complained of: F

> The appellant took umbrage over the article. He issued writ. In his statement of claim, he alleged that the natural and ordinary meaning of the words in the offending article meant and were understood to mean, inter alia, that the appellant was a cheat and that he was guilty of issuing false statements to the press with the intention of gaining popularity. Or, as his counsel put it during the argument before us, the article conveyed the meaning that the appellant was untrustworthy ... G
>
> It cannot, I think, be doubted that the first task of a court, in an action for defamation, is to determine whether the words complained of are capable of bearing a defamatory meaning. And it is beyond argument that this is in essence a question of law that turns upon the construction of the words published. As Lord Morris put it in *Jones v Skelton* [1963] 3 All ER 952 at page 958: H
>
> > The ordinary and natural meaning of words may be either the literal meaning or it may be an implied or inferred or an indirect meaning: any meaning that does not require the support of extrinsic facts passing beyond general knowledge but is a meaning which is capable of being detected in the language used can be a part of the ordinary and natural meaning of words (see *Lewis v Daily Telegraph Ltd* [1963] 2 All ER 151). The ordinary and natural meaning may therefore include any implication or inference which a reasonable reader, guided not by any special I

A but only by general knowledge and not fettered by any strict legal rules of construction, would draw from the words. The test of reasonableness guides and directs the court in its function of deciding whether it is open to a jury in any particular case to hold that reasonable persons would understand the words complained of in a defamatory sense.

B In my judgment, the test which is to be applied lies in the question: do the words published in their natural and ordinary meaning impute to the plaintiff any dishonourable or discreditable conduct or motives or a lack of integrity on his part? If the question invites an affirmative response, then the words complained of are defamatory.

C The article in the present instance when read as a whole clearly suggests that the appellant is a person who, under the guise of doing service, was in fact making false statements in order to deceive the people of Lukut. The implication is that the appellant is a man given to deception and is untrustworthy. I think that there can be no doubt that to say of a man that he is a cheat and a liar is a serious defamation of him. It has the effect of lowering the appellant in the estimation of right-thinking members of society generally. It follows that the learned judge in the present case clearly fell into error when he held that the words complained of were not defamatory of the appellant.

E Having decided whether the words complained of are capable of bearing a defamatory meaning, the next step in the inquiry is for the court to ascertain whether the words complained of are in fact defamatory. This is a question of fact dependent upon the circumstances of the particular case.

F **[28]** It is instructive to refer to the general principles involved in determining the actual meaning of the impugned statement which has been neatly summarised in the judgment of Ramly Ali J (later JCA and FCJ) in *Soh Chun Seng v CTOS-EMR Sdn Bhd* [2003] 4 MLJ 180 at p 9; [2004] 5 CLJ 46 at p 53, ('Soh Chun Seng') as follows:

G In construing the meanings of the words complained of as pleaded by the plaintiff, the court must do so in the context of the entirety of the content of exh. P2.

In Gatley on Libel and Slander (9th Ed) at p 96 the learned author states:

H It is necessary to take into consideration, not only the actual words used, but the context of the words.

At p 97, the learned author continues:

I It follows from the fact that the context and circumstances of the publication must be taken into account and that the plaintiff cannot pick and choose parts of the publication which, standing alone, would be defamatory. This or that sentence may be considered defamatory, but there may be other passages which take away the sting.

[29] We are of the considered view that a plain reading of the excerpts of the

impugned statements made by the defendant at the press conference as reproduced by the plaintiff in paras 8–9 of the statement of claim were taken in isolation and out of context to justify the plaintiff's allegation that the impugned statements are defamatory in nature. The court is of the further view that if the impugned statements are taken in its entirety and construed objectively in their natural and ordinary meaning, they are incapable of bearing any defamatory meaning.

[30] In our view the press conference held by Tan Sri Shahrir Samad, the Chairman of FELDA, was to address the issues relating to the transfer of lands for the development project as highlighted by several portals and/or newspapers on or about 21 December 2017. It was contended by the defendant that the public were concerned with the issue that FELDA may have lost its lands and the press conference was held on the same day to address the issue. This can be seen from the statements by the TV Presenter as follows:

> Presenter: Ok dan antara berita yang akan kami bawakan di Astro Awani .com. dan juga di Buletin Awani adalah sidang media khas yang diadakan sebentar saja lagi oleh Felda di Menara Felda sendiri oleh pengerusinya Tan Sri Shahrir Samad yang dipercayai berkaitan dengan isu penjualan atau transaksi penjualan tanah miiik Felda yang didakwa berlaku transaksi yang mencurigakan dan ini dilaporkan oleh beberapa portal pada hari ini dan pengerusinya Tan Sri Shahrir sendiri memberi kenyataan dan juga kami menghantar wartawan kami iaitu Asyraf Hasnan untuk mendapatkan perkembangan lanjut Kita akan melihat apakah yang diperkatakan oleh Tan Sri Shahrir. Ok, beiiau sudah bersedia. Kita terus saja ke Menara Felda bersama dengan Pengerusi Felda.

[31] The defendant attended the press conference in his capacity as the Deputy Minister in the Prime Minister's Department and it was also to assist the former Prime Minister in monitoring matters relating to Felda.

[32] The defendant also confirmed that there were discussions held between FELDA, the Attorney General's Chambers and the Prime Minister's Department to address the issue relating to the internal abuse of power in FELDA and subsequently, the various options open to FELDA to recover the lands back.

[33] We are of the view that reading the press statements in its entirety, a reasonable man would be of the considered view that the defendant's statements amounted to a call for accountability directed at the internal management of FELDA, FIC and/or other Statutory Bodies and were not defamatory of the plaintiff. In fact the defendant had expressed his view that he did not want anyone to speculate and that further investigation will be conducted and necessary steps taken by FELDA either by way of civil or criminal proceedings or exploring an amicable settlement to resolve the matter.

[34] More importantly, we agreed with the learned HCJ that the impugned statements in its entirety and construed objectively in their natural and ordinary meaning do not even refer to the plaintiff. Learned counsel for the plaintiff however submitted that the defendant's press statements referred to the plaintiff in the context of the statement namely, 'Bila kita gagal melakukan tadbir urus yang baik ini yang berlaku. Sebab FELDA, FIC *dan juga pihak syarikat*. (Emphasis added.) It was the contention of the plaintiff that the reference to 'pihak syarikat' could only mean Synergy, and no other entity. It was also contended that there was no other company that was mentioned by the defendant at the press conference. It is interesting to note that according to the plaintiff, at the said press conference, Tan Sri Shahrir had spoken first where Tan Sri Shahrir explicitly mentioned 'Synergy' by name, namely, *Syarikat Synergy Promenade yang di berikan PA'.* The plaintiff had filed a suit in defamation against Tan Sri Shahrir based on the press statements issued by him.

[35] In our view, the plaintiff's case is premised on the impugned statements allegedly made by the defendant during the press statement. In this regard the court would only construe in its entirety whether there was any reference made to the plaintiff by the defendant notwithstanding that both the defendant and Tan Sri Shahrir were present at the press statement. The defendant was never asked to clarify or explain whom he meant by the reference to the word *syarikat*It could not be assumed that the word 'syarikat' referred to the plaintiff. In fact the plaintiff named themselves in the pleading as 'Synergy Promenade Sdn Bhd' and not as 'Syarikat Synergy Promenade Sdn Bhd' It was also too late in the circumstances of this case for the plaintiff to orally seek to amend the statement of claim.

[36] In *Knupffer v London Express Newspaper Ltd*, it was stated that it is an essential element of the cause of action in defamation that the words complained of be published 'of the plaintiff'. Where he is not named, the test is whether the words would reasonably lead people acquainted with him to the conclusion that he was the person referred to. The question whether they did so, in fact does not arise if they cannot in law be regarded as being capable of referring to him.

[37] It is pertinent to note that regardless of whether in an application to strike out a claim or a full trial, the alleged defamatory words complained of must refer to the plaintiff.

[38] The test is an objective one. It is not a subjective test. In *Newstead v London Express Newspaper Ltd* [1940] 1 KB 377, it was observed that the reasonable meaning of impugned words and whether they referred to the plaintiff must be tested objectively and not subjectively. The question is to be

determined by the words actually used and the context and not what the defendant intended to mean.

[39] In *Tan Sri Musa bin Dato' Hj Hassan & Ors v Uthayakumar a/l Ponnusamy* [2012] 1 MLJ 68 this court held, inter alia, that:

> This is an appeal on an O 18 r 19 of the Rules of Court 1980 application by the appellants (the defendants) to strike out the pleadings of the respondent (the plaintiff) for an action in libel which was dismissed by the learned judicial commissioner. By a majority, we allowed this appeal as the statement of claim discloses no reasonable cause of action and obviously unsustainable by the plaintiff in his private, personal and individual capacity, because it is patently clear from the alleged defamatory statement pleaded in paras 11, 15 and 17, that does not refer to, or directed against him personally, but to an illegal organisation known as HINDRAF.

CONCLUSION

[40] Having perused the records of appeal and having considered the submissions of both parties written and oral, and based on the reasons as adumbrated above and in all the circumstances, it is our unanimous decision that there is no appealable error in the finding and decision of the learned HCJ. In addition, we find that the plaintiff's statement of claim had also failed to properly plead how the impugned statements referred to the plaintiff. In this regard, we are of the view that it was too late for the plaintiff to orally seek to amend the statement of claim. In the premises, we are of the view that the plaintiff's claim against the defendant 'discloses no reasonable cause of action and is plain and obviously unsustainableWe dismissed the appeal with costs and affirmed the decision of the High Court dated 4 October 2018. We award costs of RM10,000 to be paid by the plaintiff to the defendant subject to allocator.

Appeal dismissed with costs.

Reported by Ahmad Ismail Illman Mohd Razali